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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DARRYL L. DEFREESE, JEFFREY M. SEAMAN, and
ANTHONY J. WASILEWSKI

Appeal 2010-001953
Application 09/475,696
Technology Center 2400

Before ALLEN R. MACDONALD, ERIC S. FRAHM, and DAVID M. KOHUT, *Administrative Patent Judges*.

FRAHM, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Introduction

Appellants appeal under 35 U.S.C. § 134(a) from a final rejection of claims 85-105. Claims 1-84 and 106 have been canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Exemplary Claim

Independent claim 85 recites a method for (i) receiving an entitlement unit table (EUT) including a first service identifier and one or more entitlement unit numbers (EUNs), (ii) determining if one of the EUNs matches an authorized EUN, and (iii) tuning to the selected first service if there is a match between EUNs. Independent claim 95 recites an apparatus including a tuner and a processor for performing the method of claim 85.

Exemplary independent claim 95 under appeal reads as follows:

> 95. An apparatus, comprising:
>
> a tuner; and
>
> a processor configured to control the tuner, the processor further configured to:
>
> receive an entitlement unit table (EUT), the EUT comprising an identifier of a first service and one or more entitlement unit numbers (EUNs) that each uniquely identify a service package that comprises one or more services available to the user, the one or more services for each of the one or more EUNs including the first service;
>
> responsive to user selection of the first service, determine whether at least one of the one or more EUNs matches an authorized EUN; and

responsive to determining that there is a match between the one or more EUNs and the authorized EUN, configure the tuner to tune to the selected first service.

Rejections[1]

1. The Examiner rejected claim 95 as being unpatentable under 35 U.S.C. § 103(a) over the combination of Campbell (US 4,862,268), and Hayes (US 4,718,107). Ans. 3-5.

2. The Examiner rejected claims 85, 89, and 105 as being unpatentable under 35 U.S.C. § 103(a) over the combination of Campbell, Hayes, and Urakoshi (US 6,067,564). Ans. 5-6.

3. The Examiner rejected claims 86 and 87 as being unpatentable under 35 U.S.C. § 103(a) over the combination of Campbell, Hayes, Urakoshi, and Appellants' Admitted Prior Art (hereinafter, "AAPA"). Ans. 7-8.

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[1] Separate patentability is not argued for dependent claims 86-94 and 96-104 (*see* App. Br. 9-16). Appellants merely assert (App. Br. 13-16) that the additional references to Urakoshi, AAPA, and Wasilewski fail to cure the deficiencies of Campbell and Hayes. In addition, "[a] statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim." 37 C.F.R. § 41.37(c)(1)(vii) (last sentence). Further, merely restating with respect to a second claim (e.g., claim 85) an argument, previously presented with respect to a first claim (e.g., claim 95), is not an argument for separate patentability of the two claims. Appellants present no substantive arguments in the Reply Brief as to the Examiner's rejections two through six *infra*.

For the foregoing reasons, and because Appellants only present arguments relating to the merits of Campbell and Hayes (*see* App. Br. 5-13), our analysis will specifically address the § 103 rejection over Campbell and Hayes as applied to independent claims 85 and 95.

4. The Examiner rejected claims 88 and 90-94 as being unpatentable under 35 U.S.C. § 103(a) over the combination of Campbell, Hayes, Urakoshi, and Wasilewski (US 5,420,866). Ans. 8-11.

5. The Examiner rejected claims 96-104 as being unpatentable under 35 U.S.C. § 103(a) over the combination of Campbell, Hayes, and AAPA. Ans. 11-12.

6. The Examiner rejected claims 98-104 as being unpatentable under 35 U.S.C. § 103(a) over the combination of Campbell, Hayes, and Wasilewski. Ans. 12.

Appellants' Contentions

Appellants contend (App. Br. 5-13; Reply Br. 3-5) that the Examiner erred in rejecting claims 85 and 95 under 35 U.S.C. § 103(a) for numerous reasons including: (1) tuning before determining if there is a EUN match (i.e., tuning-before-determination) appears to be necessary in Campbell, and the modification by Hayes would change Campbell's operation and render Campbell unsatisfactory for its intended purpose (App. Br. 5-6); (2) although it appears the Examiner relies on tier enable code 218 in Figure 11 as the authorized EUN, it is not clear what the Examiner relies on in Campbell as the authorized EUN (App. Br. 6-7); (3) Campbell fails to disclose access to control data independent of tuning to any particular channel selected by a user (i.e., independent access) (Reply Br. 3); (4) Campbell's teletext pages do not provide for transmission of control data, and only transmit text transmission words as shown in Figure 11 (Reply Br. 4); and (5) Campbell only tunes to a channel after a user selects a channel

that provides a program, and then and only then can the VBI of a video signal be accessed and comparisons made (Reply Br. 4-5).

With regard to the independent claim 85, as well as dependent claims 86-94 and 96-105, Appellants contend (App. Br. 13-16) that Urakoshi, AAPA, and/or Wasilewski fail to cure the deficiencies with respect to Campbell and Hayes already argued.

Issue on Appeal

Did the Examiner err in rejecting claims 85-105 as being obvious because the combination of Campbell and Hayes is (1) not properly made, or (2) fails to teach or suggest the authorized EUN limitation at issue?

ANALYSIS

We have reviewed the Examiner's rejections in light of Appellants' contentions in the Appeal Brief and Reply Brief that the Examiner has erred.

We disagree with Appellants' conclusions. We adopt as our own (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken and (2) the reasons set forth by the Examiner in the Examiner's Answer (Ans. 3-21) in response to Appellants' Appeal Brief. We concur with the conclusions reached by the Examiner.

Specifically, we agree with the Examiner (Ans. 13-14) that Campbell's subscriber's tier code 218 is equivalent to an authorized EUN (Fig. 12; col. 12, ll. 18-21; col. 15, ll. 31-37). We also agree with the Examiner that Campbell (Fig. 12; col. 12, ll. 16-21; col. 15, ll. 31-37) discloses determining whether a selected first service is authorized by determining whether one of the EUNs matches an authorized EUN (Ans. 3-5, 10, and 13-14). Campbell discloses a tier code 202 that is equivalent to

the recited EUN (*see* Fig. 11; col. 13, ll. 9-11), and a tier enable code 218 (*see* Fig. 12) that is equivalent to the recited authorized EUN.

Furthermore, Campbell's Figure 12 shows that a video signal is not descrambled until after it is determined whether there is a match between the tier code 202 (i.e., EUN) and the tier enable code 218 (i.e., authorized EUN) (steps 320-332 in Fig. 12). Tuning is not complete until a channel is selected (step 310) *and* the codes match (Fig. 12, steps 320, 322, 324, and 332). Thus, because the chart shown in Figure 12 flows from step 332 to step 310 in a loop, and then to steps 320-324, Campbell discloses determining a EUN match in response to a user selection, and then tuning that selection. Appellants' arguments do not convince us otherwise.

Notably, although Appellants have attacked Campbell individually as noted above, Appellants do not otherwise contend that the *combination* of Campbell and Hayes fails to meet the limitations of claims 85 and 95. Appellants have not presented any arguments as to the disclosure of Hayes, or otherwise contend that Hayes fails to cure the deficiencies of Campbell.

We disagree with Appellants' assertion (App. Br. 5-6) that tuning before determining if there is a EUN match (i.e., tuning-before-determination) *appears* to be necessary in Campbell, and the modification by Hayes would change Campbell's operation and render Campbell unsatisfactory for its intended purpose. As discussed above, we find that Campbell (Fig. 12) teaches tuning after determining a EUN match, and that Hayes also teaches this feature (Ans. 4). Appellants do not argue that such a feature is not taught or suggested by the *combination* of Campbell and Hayes, only that the combination is improper and modifying Campbell with Hayes would render Campbell unsatisfactory for its intended purpose (App.

Br. 5-6). However, because Campbell and Hayes both tune after determining a match of the EUNs, we cannot agree with Appellants' contentions that the combination of Campbell and Hayes is improper.

Appellants' arguments in the Reply Brief regarding Campbell are not commensurate in scope with the language actually recited in claims 85 and 95 on appeal. Appellants argue (Reply Br. 3-5) that (1) Campbell fails to disclose access to control data independent of tuning to any particular channel selected by a user (i.e., independent access); (2) Campbell's teletext pages do not provide for transmission of control data, and only transmit text transmission words as shown in Figure 11; and (3) Campbell only tunes to a channel after a user selects a channel that provides a program, and then and only then can the VBI of a video signal be accessed and comparisons made. However, claims 85 and 95 do not recite "control data" or "independent access," nor do these claims recite transmission of "control data" as opposed to text transmission words, or accessing a "VBI" of a video signal after a user selects a channel. Accordingly, Appellants' argument in the Reply Brief do not convince us that the Examiner erred in rejecting the claims on appeal under § 103(a).

In view of the foregoing, Appellants have not sufficiently shown that the Examiner erred in rejecting independent claims 85 and 95, or their respective dependent claims, under 35 U.S.C. § 103(a) and we will sustain the rejections before us.

CONCLUSIONS

(1) The Examiner has not erred in rejecting claims 85-105 as being unpatentable under 35 U.S.C. § 103(a).

(2) Claims 85-105 are not patentable.

DECISION

The Examiner's rejections of claims 85-105 are affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

ELD